

Rule 27, Ariz. R. Crim. P.

PROBATION: Conviction for new offense as automatic probation violation; no probation violation hearing needed.....Revised 3/2010

Rule 27.8(e), Ariz. R. Crim. P., provides:

Disposition Upon Determination of Guilt of Subsequent Offense.

If there is a determination of guilt, as defined by Rule 26.1(c), of a criminal offense by a probationer in the court having jurisdiction over the probation matter, no violation hearing shall be required and the court shall set the matter down for a disposition hearing at the time set for entry of judgment on the criminal offense.

The purpose of this Rule is to allow the court that is handling both the probation violation proceeding and the new criminal proceeding to consolidate the two cases and have simultaneous dispositions in the interests of judicial economy. *State v. Flemming*, 184 Ariz. 110, 114, 907 P.2d 496, 500 (1995). Thus, under Rule 27.8(e), when a defendant who is on probation is convicted of a new substantive offense, the new conviction results in an automatic violation of the defendant's probation. See, e.g., *State v. Jones*, 196 Ariz. 306, ¶ 1, 995 P.2d 742 (App. 1999) (defendant on probation was convicted of a new offense, which "worked an automatic violation of probation"). Thus, when a defendant is convicted of a new offense committed while he is on probation, no probation violation hearing is required.

Under this rule, the defendant must be on probation in the same *court* that has now found guilt on the new offense – as, for example, in the superior court. In *State v. Zanzot*, 175 Ariz. 83, 853 P.2d 1130 (App. 1993), the defendant was on probation in superior court when he was arrested for a new offense. He pleaded guilty to the new offense in city court. A petition to revoke his probation was filed in superior court, and he admitted at the probation violation hearing that he had pleaded guilty to a new offense

in city court. The superior court judge found an automatic violation of the defendant's superior court probation, revoked his probation, and sentenced him to prison. On appeal, the defendant argued that the superior court judge "erred by finding an automatic violation pursuant to Rule 27.7(e) when the determination of guilt on the subsequent offense was made in Phoenix City Court." *Id.* at 85, 853 P.2d at 1132. The Court of Appeals agreed with the defendant that the trial court erred. However, the Court affirmed because it found that the error was technical and harmless under the facts of the case.

Furthermore, the defendant must currently be on probation in the *county* where the new finding of guilt is made. This Rule does not require that the same *judge* must both place the defendant on probation and make the new finding of guilt. *State v. Flemming*, 184 Ariz. 110, 114, 907 P.2d 496, 500 (1995), *citing State v. Shapiro*, 26 Ariz. App. 536, 549 P.2d 1054 (App. 1976) and *State v. Astorga*, 26 Ariz. App. 260, 547 P.2d 1060 (App. 1976).